Filed 3/23/07; part. pub. order 4/23/07 (see end of opn.)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

EUGENE LEVY et al.,	
Plaintiffs and Appellants,	G035677
v.	(Super. Ct. No. 02CC00265)
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	O P I N I O N
Defendant and Respondent.	

Appeal from a judgment of the Superior Court of Orange County, Stephen J. Sundvold, Judge. Affirmed.

Lawrence Walner and Associates, Lawrence Walner, Michael S. Hilicki; Fineman & Associates and Neil B. Fineman for Plaintiffs and Appellants.

Skadden, Arps, Slate, Meagher & Flom, Darrel J. Hieber, T. Jean Mooney; Robie & Matthai, James R. Robie and Steven S. Fleischman for Defendant and Respondent.

* * *

Plaintiffs Eugene Levy and Sharon Battle challenge the judgment entered after the trial court sustained defendant State Farm Mutual Automobile Insurance Company's (State Farm) demurrer to plaintiffs' fifth amended complaint without leave to amend, granted State Farm's motion to strike class action allegations without leave to

amend, and granted defendant's motion to dismiss Battle on the grounds of forum non conveniens. Plaintiffs contend they have properly alleged both individual and class claims arising from State Farm's practice of omitting certain labor and material costs from its repair estimates, and using its own contracted repair shops in its survey to determine the prevailing competitive repair labor rates included in its estimates.

We conclude the trial court properly sustained State Farm's demurrers without leave to amend. State Farm's insurance policy obligated it to repair its insureds' vehicles to their preaccident condition. The fifth amended complaint fails to describe how following State Farm's repair estimates would not have restored Levy's or Battle's vehicles to their preaccident condition. Instead, the complaint alleges State Farm's repair estimates failed to include items required by industry repair standards. California regulators, however, have not specified any particular repair standards and have not required insurers to follow such standards. Moreover, nothing in plaintiffs' insurance contracts required State Farm to follow the standards preferred by plaintiffs. Similarly, no policy provision or law precludes State Farm from including its contracted repair shops in determining prevailing competitive repair labor rates. We therefore affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

Levy, a California resident, purchased a State Farm auto insurance policy that obligated State Farm to pay the cost of repair or replacement for covered vehicles if damaged. The policy provides that the cost of repair or replacement is based on one of the following: "1. the cost of repair or replacement agreed upon by [the insured] and [State Farm]; [¶] 2. a competitive bid approved by us; or [¶] 3. an estimate written based upon the prevailing competitive price. The prevailing competitive price means prices charged by a majority of the repair market in the area which the *car* is to be

repaired as determined by a survey made by [State Farm]. If *you* ask, [State Farm] will identify some facilities that will perform the repairs at the prevailing competitive price. . . ."

In August 1999, Levy's car was involved in an accident and suffered damage to its right front wheel, right front fender, right front bumper, steering box, suspension, and lower body. Levy brought the damaged vehicle to a State Farm facility, where an employee estimated the cost of repair using State Farm's software. The estimator then offered to pay Levy $550.70, less the policy's $250 deductible, instead of having the vehicle repaired. Levy accepted the payment.

Battle, an Illinois resident, also purchased a State Farm auto insurance policy containing a repair or replacement provision similar to Levy's policy. In January 2001, an accident damaged the left front end and left fender of Battle's car. Battle took her car to a State Farm estimating facility, and at State Farm's request, had her car repaired at a State Farm-contracted repair shop.

Believing State Farm's repair estimates were inadequate, Levy and Battle sued State Farm on behalf of themselves and others similarly situated. After several State Farm demurrers were sustained with leave to amend, plaintiffs filed their fifth amended complaint, seeking damages, restitution, and declaratory and injunctive relief. The fifth amended complaint alleges that State Farm provides its policyholders repair estimates which do not meet industry standards as defined by automobile manufacturers, the Inter-Industry Conference on Auto Collision Repair (I-CAR), or the National Institute for Automotive Service Excellence (ASE).

Specifically, plaintiffs contend State Farm's repair estimates routinely omit the time and materials for the following, where required: "(i) weld through primer; (ii) undercoating; (iii) flex additive; (iv) masking inner surfaces to prevent over-spray into door and hood jams; (v) front wheel alignment; (vi) four wheel alignment; (vii) aim lamps; (viii) replace EPA label; (ix) rust proofing; (x) removal and installation of add ons

such as moldings and trim to facilitate blending of paint; (xi) removal of parts such as radiators in order to properly refinish them; (xii) refurbishing used replacement parts; (xiii) wet sand and buff procedures to match the existing finish; (xiv) replacement of bumper support brackets when the bumper has been damaged; and (xv) seat belt checks."

The complaint further alleges that State Farm contracts with repair shops to follow State Farm's estimate of necessary repairs, even if the shop's professionals might believe additional repairs are required. State Farm will not pay for repairs not specified in State Farm's estimate. The complaint also alleges the labor rates State Farm uses in its estimates are below market rates because State Farm uses only its own contracted repair shops in conducting the survey that determined the "'prevailing competitive price'" required by the insurance contract.

State Farm demurred to the fifth amended complaint, moved to strike the class allegations, and sought dismissal of Battle's claims on the grounds of forum non conveniens. The trial court granted the demurrers without leave to amend, granted the motion to strike, and dismissed Battle's claims based on forum non conveniens. Plaintiffs now appeal.

II

STANDARD OF REVIEW

"On review of an order sustaining a demurrer without leave to amend, our standard of review is de novo, 'i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law.' [Citation.]" (*Santa Teresa Citizen Action Group v. State Energy Resources Conservation & Development Com.* (2003) 105 Cal.App.4th 1441, 1445.) "'"We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its

parts in their context.'" (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126 (*Zelig*).)

III

DISCUSSION

A. Plaintiffs Have Not Alleged State Farm Breached Any Terms of Its Insurance Policy

1. The Policy Does Not Require State Farm to Provide Repairs Based on Plaintiffs' View of "Industry Standards"

Facts alleging a breach, like all essential elements of a breach of contract cause of action, must be pleaded with specificity. (See generally 4 Witkin, Cal. Procedure (4th ed. 1996) Pleading, § 4495, pp. 585-586; *Bentley v. Mountain* (1942) 51 Cal.App.2d 95, 98 [general averments that defendants violated contract insufficient; pleader must allege facts demonstrating breach]; *Thompson v. Purdy* (1931) 117 Cal.App. 565, 567, [general averments that defendant failed to perform duties or comply with contract insufficient].) The fifth amended complaint alleges State Farm breached the contract by offering an amount to Levy based upon a repair estimate which did not meet "industry standards" because it excluded reimbursement for the following items: "(1) 1.8 hours to strip the replacement part; (2) 0.3 hours for removal and installation of hood front molding; (3) 0.3 hours for removal and installation of right headlamp door; (4) 0.5 hours for removal and installation of the right door trim panel; (5) 0.3 hours for removal and installation of the right door belt molding; . . . (6) 0.5 hours for refinishing the corrosion protection[,]" (7) 1.5 hours of labor and $5 in parts for masking the entryways; (8) 1.0 hours of labor and $1 in parts for color sand and buff; and (9) a front end alignment valued at $39.95. The complaint also alleged State Farm based its estimate on labor rates $4 an hour below industry standards. As a result of these alleged deficiencies, State Farm understated Levy's repair by approximately $440.

The complaint also alleged that the repairs performed on Battle's car did not include certain repairs necessary to conform with industry standards, listing the following omissions: "(1) 1.7 hours to remove and install the radiator and the bolted parts as necessary to properly refinish the radiator side panel; (2) 0.5 hours for weld-thru primer to prevent corrosion from occurring between the welded parts; . . . (3) 0.3 hours for a seat belt check[;]" (4) 0.3 hours and $32.85 in parts to replace the left body side molding; and (5) right and left bumper support bracket replacement at a cost of $118.50. The complaint alleges the difference between the cost of State Farm's repairs to Battle's car and a repair done based on industry standards was approximately $300.

Despite the complaint's specific description of how Levy's estimate and Battle's repair fell short of "industry standards," the trial court sustained a succession of State Farm's demurrers because plaintiffs failed to demonstrate a link between State Farm's alleged violation of "industry standards" and the insurance contracts State Farm issued to the two named plaintiffs. The trial court noted the insurance contract did not purport to obligate State Farm to follow any particular industry standard, but required State Farm only to "restore the vehicle to its pre-loss condition."

"The meaning to be ascribed to an insurance policy, as with any contract, is a question of law. It is a matter, in the first instance, for the trial court's determination, not the jury's. . . . 'Although we construe all provisions, conditions, or exceptions that tend to limit liability strictly against the insurer [citation], strict construction does not mean strained construction. [Citations.] We may not, under the guise of strict construction, rewrite a policy to bind the insurer to a risk that it did not contemplate and for which it has not been paid.' [Citation.] The words used in a policy of insurance are to be construed according to the plain meaning a layman would ordinarily attach to them . . . . [Citation.]" (*Ray v. Farmers Ins. Exchange* (1988) 200 Cal.App.3d 1411, 1415-1416 (*Ray*.) In *Ray,* the court recognized the plain, ordinary meaning of "pre-loss condition" in an insurance contract meant the "preaccident safe, mechanical, and

cosmetic condition." (*Id.* at p. 1418.) The fifth amended complaint does not allege in what manner Battle's car after repair differed from its preaccident condition, or how Levy's car would have differed from its preaccident condition had it been repaired according to State Farm's estimate. Instead, the complaint makes the same allegation as to the omitted repair items: "Each of these repairs was required by the industry standards as set forth by automobile manufacturers, I-CAR and ASE. There are no standards accepted in the industry which would have allowed for omission of these repairs."

Attempting to establish a link between the cited industry standards and the policy's promise to restore the vehicle to preaccident condition, the fifth amended complaint cites California Code of Regulations, title 16, section 3365, providing: "The accepted trade standards for good and workmanlike auto body and frame repairs shall include, but not be limited to, the following: [¶] (a) Repair procedures including but not limited to the sectioning of component parts, shall be performed in accordance with OEM [Original Equipment Manufacturer] service specifications or nationally distributed and periodically updated service specifications that are generally accepted by the autobody repair industry. [¶] (b) All corrosion protection shall be applied in accordance with manufacturers' specifications or nationally distributed and periodically updated service specifications that are generally accepted by the autobody repair industry."

Plaintiffs' reliance on California Code of Regulations, title 16, section 3365, however, is problematic for two reasons. First, the regulation cited does not purport to apply to insurers, or to provide a minimum standard for repairs required to return a vehicle to its pre-collision condition. Instead, section 3365 was adopted to carry out the purposes of Business and Professions Code section 9884.7, which provides that the Bureau of Automotive Repairs may invalidate an auto repair dealer's registration for "[a]ny willful departure from or disregard of accepted trade standards for good and workmanlike repair in any material respect, which is prejudicial to another without consent of the owner or his or her duly authorized representative." (Bus. & Prof. Code,

§ 9884.7, subd. (a)(7).) The provision does not establish a private right of action against an insurer.

Second, the regulation declines to adopt any particular repair standard. Thus, the regulation is not violated simply because a repair estimate fails to meet specifications outlined by the manufacturers, I-CAR, or ASE. In essence, plaintiffs' complaint invites the court to determine whose repair standards State Farm must follow, something California regulators have expressly declined to do.

Finally, plaintiffs cite the complaint's allegation that a failure to follow the cited industry standards "by definition do[es] not return a vehicle to its pre-loss condition." As we noted above, in reviewing a trial court's order sustaining demurrers, "'"[w]e treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] . . ." . . .'" (*Zelig, supra*, 27 Cal.4th at p. 1126.) This allegation is a mere conclusion unsupported by any provision of the insurance policy or applicable law. We thus reject it.

2. The Complaint Does Not Allege a Breach of Contract Based on State Farm's Labor Costs

The fifth amended complaint alleges the labor costs in the estimate provided to Levy were "$4 per hour below industry standards." Again, nothing in the insurance contract requires State Farm to set labor costs at the industry scale. Instead, the policy requires State Farm's repair estimate to be "based upon the prevailing competitive price." The policy explains: "The prevailing competitive price means prices charged by a majority of the *repair market* in the area where the *car* is to be repaired as determined by a survey made by [State Farm]" (Italics added.) The complaint makes no connection between State Farm's failure to follow industry standards and the policy's requirement that the repair estimate reflect the prevailing competitive price.

Although not referring specifically to Levy's estimate, or Battle's repair, the complaint alleges that State Farm does not conduct its prevailing competitive price

surveys properly. Citing a State Farm brochure, the complaint alleges: "State Farm has narrowly interpreted the 'repair market in the area where the car is to be repaired' as 'composed of those repair facilities which comply with State Farm Insurance Company's repair facility criteria.' In other words, the 'survey' called for in the policy has been done only of repair facilities that have agreed to make the repair omissions required by State Farm and charge the lower labor rates required by State Farm. Further, State Farm only determines by the survey that a 'substantial number' of the shops surveyed can perform the repairs at State Farm's prices. It does not define substantial number and this does not necessarily mean a majority, as required by the terms of the insurance contract. State Farm's survey data and results remain strictly confidential so there is no way for insureds to test the timeliness or the accuracy of the surveys. The representation that these are 'market rates' is therefore false. The labor rates State Farm uses in its Estimates are consistently below the actual market rate for the labor in question."

Despite the complaint's general conclusion that State Farm's labor rates are below market rates, the complaint's specific allegations supporting this conclusion do not demonstrate a breach of contract. For example, the complaint alleges that State Farm surveys only those shops which agree to State Farm's rates. There is nothing in the policy, however, which prevents State Farm from doing this. Moreover, although some states preclude insurers from including contracted repair shops in auto repair labor rate surveys, California does not. (Compare Cal. Code Regs., tit. 10, § 2698.91 with R.I. Gen. Laws § 27-29-4.4.)[1] Similarly, the complaint cites a State Farm publication which promises that a "substantial number" of the shops in the local area will repair the

[1] Rhode Island General Laws, section 27-29-4.4, subdivision (a)(3), provides: "Insurers may not use an auto body labor rate survey, contract rates from auto body repair facilities with which it has a formal agreement or contract to provide auto body repair services to insureds and/or claimants, or rates from a repair facility holding a special use license."

insured's damaged vehicle at the rates quoted, and asserts that this "does not necessarily mean a majority," as required by the policy. An allegation that a breach of contract *might have* occurred is plainly insufficient to support a breach of contract cause of action.[2]

We therefore conclude the fifth amended complaint fails to state a cause of action for breach of contract.

B. The Complaint Does Not Allege a Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing

"Implied in every contract is a covenant of good faith and fair dealing that neither party will injure the right of the other to receive the benefits of the agreement." (*PPG Industries, Inc. v. Transamerica Ins. Co.* (1999) 20 Cal.4th 310, 314.) The fifth amended complaint alleges State Farm breached this implied covenant by: "a. preparing Estimates that uniformly exclude certain procedures and materials that are necessary to repair damaged vehicles in a manner that is consistent with the industry standards; [¶] b. failing or refusing to conduct or ignoring a legitimate survey, as required by its standardized automobile insurance policy, to determine the 'prevailing competitive prices' used by State Farm Estimators in preparing Estimates; [¶] c. referring its insureds to body shops that are operating under a contract with State Farm that amounts to an undisclosed conflict of interest; [¶] d. prohibiting body shops from exercising independent professional judgment with respect to repairs which they deem necessary as determined by industry standards; and [¶] e. with respect to the Company-operated Drive-In estimating facilities, tendering direct payments to insureds that are arbitrarily

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[2] We note that Levy could have determined whether State Farm's survey included a majority of shops in the repair area. California Code of Regulations, title 10, section 2698.91 requires insurers to report labor survey results to the Department of Insurance, which must include the name and address of each shop included in the survey, and the total number of shops in the area. (§ 2698.91, subd. (c).) The Department of Insurance is required to make the reports publicly available on request. (§ 2698.91, subd. (e).)

determined and bear no relation to the actual sums necessary to repair damaged vehicles according to industry standards."

With respect to items a., b., d., and e., each cites State Farm's failure to follow "industry standards," which we noted were neither required by law nor included in the insurance policy. For item c., the mere fact State Farm has an allegedly undisclosed contract with a repair shop to perform repairs according to State Farm's estimate does not by itself deprive the insured of the benefits promised under the policy. For item d., the mere fact a repair shop may not exercise independent judgment does not mean the insured's vehicle will not be restored to its preaccident condition. Accordingly, none of the allegations establish a breach of the implied covenant of good faith and fair dealing.

C. The Complaint Does Not Allege a Violation of the Unfair Competition Law (UCL)

1. Battle Cannot Allege a Cause of Action Under the UCL

As an initial matter, we note that Battle, as an Illinois resident, cannot state a viable UCL claim. California's "state statutory remedies may be invoked by out-of-state parties [only] when they are harmed by wrongful conduct occurring in California." (*Norwest Mortgage, Inc. v. Superior Court* (1999) 72 Cal.App.4th 214, 224-225.) Because State Farm's handling of Battle's claim occurred in Illinois, she may not invoke California's UCL.[3]

2. Levy's Allegations Fail to Establish Unlawfulness Under the UCL

The UCL proscribes "any unlawful, unfair or fraudulent business act or practice." (Bus. & Prof. Code, § 17200.) A plaintiff may allege a UCL cause of action if the defendant's actions fall within any of these three categories. (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.

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[3] Battle contends she has alleged a cause of action under Illinois' unfair competition law. We need not reach this issue because, as discussed below, we conclude the trial court properly granted State Farm's forum non conveniens motion.

(*Cel-Tech*).) Plaintiffs contend the allegations in their complaint established State Farm engaged in unlawful and unfair conduct under the UCL. We disagree.

The complaint alleges State Farm violated California civil fraud and deceit statutes, Civil Code sections 1572, 1574, 1709, and 1710. Incorporating by reference its previous allegations, the complaint describes the unlawful acts of affirmative fraud under these sections as follows: "State Farm violated the California Civil Code by misrepresenting that it would pay for all of the cost of repair of insured vehicles, by misrepresenting that it would pay the prevailing competitive price for repairs, by representing that checks tendered to insureds in lieu of repairs represented the full amount necessary to perform such repairs . . . ."

To show an "unlawful" act under the UCL, the plaintiff must allege all of the elements required for a violation of an existing statute or other law. (*South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 880.) To state a cause of action under the civil fraud statutes, each element "'must be alleged in the proper manner and the facts constituting the fraud must be alleged with sufficient specificity to allow defendant to understand fully the nature of the charge made.' [Citations.] [¶] The requirement of specificity in a fraud action against a corporation requires the plaintiff to allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.)

The allegations in the UCL claim cited above fail to provide any specificity regarding what statements were made, who made them, etc. The complaint's only reference to misrepresentations State Farm made to the named plaintiffs reads: "The [State Farm] employee offered to pay Levy directly in lieu of making the necessary repairs. The employee represented or implied that the amount offered as a direct payment was the cash equivalent of the total cost of repairing the vehicle according to

industry standards." The phrase "represented or implied" is far too vague to properly plead a fraud cause of action. The plaintiffs apparently recognized their inability to plead fraud with specificity when they dropped their separate fraud and deceit cause of action after the trial court sustained three successive demurrers to it. The pleading requirements for a fraud cause of action would be rendered meaningless if a plaintiff were allowed to generally plead a violation of civil fraud statutes under the UCL.

The allegations relating to fraudulent nondisclosure also do not state a cause of action for fraud. The complaint alleges State Farm violated the civil fraud statutes "by failing to tell insureds that it routinely omits necessary repairs from repair estimates, by failing to tell insureds that it uses only data from shops that have agreed to omit these necessary repairs in determining the prevailing competitive prices for repairs." The premise underlying these allegations is that State Farm omits "necessary" repairs. The complaint characterizes "necessary" repairs as those which conform to the industry standards cited. As we noted earlier, plaintiffs have failed to cite any law or policy provision requiring State Farm to follow "industry standards" when estimating repairs. Thus, State Farm did not act deceitfully when it did not inform the insureds that the repair estimates might not meet various industry standards it had not agreed to follow.

The complaint also alleges State Farm's actions violated Insurance Code section 790.03, proscribing "unfair and deceptive acts or practices in the business of insurance," and California Code of Regulations, title 10, section 2695.8, subdivision (a), which prohibits insurers from referring to repair shops without paying the sums necessary to restore the insured's vehicle to its pre-loss condition. These provisions are part of the Unfair Insurance Practices Act (UIPA). (Ins. Code, § 790 et seq.) These allegations fail to show State Farm acted unlawfully because "the UIPA does not create a private right of action for violations of its provisions [citation], and . . . a plaintiff may not 'plead around' that limitation by casting a cause of action based on a violation of the UIPA as one brought under the UC[L]." (*Manufacturers Life Ins. Co. v. Superior Court* (1995)

10 Cal.4th 257, 267.) Accordingly, we conclude plaintiffs have failed to state a UCL claim based on State Farm's alleged "unlawful" activities.

3. Levy's Allegations Fail to Establish Unfairness Under the UCL

"Although the unfair competition law's scope is sweeping, it is not unlimited. Courts may not simply impose their own notions of the day as to what is fair or unfair." (*Cel-Tech, supra,* 20 Cal.4th at p. 182.) The California Supreme Court has not clearly defined what constitutes an "unfair" business practice under the UCL in the consumer context. Nonetheless, two lines of appellate opinions have developed. "One line defines 'unfair' as prohibiting conduct that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers and requires the court to weigh the utility of the defendant's conduct against the gravity of the harm to the alleged victim. [Citations.] The other line of cases holds that the public policy which is a predicate to a consumer unfair competition action under the 'unfair' prong of the UCL must be tethered to specific constitutional, statutory, or regulatory provisions. [Citations.]" (*Bardin v. DaimlerChrysler Corp*. (2006) 136 Cal.App.4th 1255, 1260-1261 (*Bardin*).) We may quickly dispense with the latter line of authority. As we noted above, plaintiffs have not identified any specific constitutional, statutory, or regulatory provisions State Farm has violated.

This leaves us with the question whether State Farm's actions were "immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers" under the UCL. (*Bardin, supra,* 136 Cal.App.4th at p. 1260.) We recognize that "weighing the utility of a defendant's conduct against the gravity of the harm to the alleged victim" is often difficult at an early stage in the proceedings. (*Ibid.*) Nevertheless, "we will affirm a judgment of dismissal where the complaint fails to allege facts showing that a business practice is unfair, unlawful or fraudulent." (*Id.* at p. 1271.)

We addressed what constitutes an unfair business practice in *Bardin*, with facts analogous to those presented here. There, an automobile manufacturer constructed its sport utility vehicle's exhaust manifold from tubular steel. The plaintiffs alleged the "standard of the industry" required the manufacturer to make the exhaust manifold out of cast iron, and that the less expensive tubular steel "'prematurely cracked and failed much earlier than would a cast iron manifold.'" (*Bardin, supra,* 136 Cal.App.4th at p. 1362.) The plaintiffs alleged the manufacturer concealed these facts from the public to sell replacement parts, increase profits, and gain market share. (*Ibid.*)

Bardin affirmed the trial court's sustaining of demurrers without leave to amend. The court found no authority supporting a public policy against using tubular steel manifolds in manufacturing cars, even if less durable than cast iron. (*Bardin, supra,* 136 Cal.App.4th at p. 1270.) The court cited "the general public policy that a consumer can be 'fairly charged with the risk that the product will not match his economic expectations unless the manufacturer agrees that it will." (*Ibid.*) The court concluded that nothing in the complaint supported the plaintiffs' contention that the manufacturer's conduct "was immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." (*Ibid.*)

Here, as in *Bardin*, plaintiffs failed to demonstrate how State Farm's alleged failure to follow an ill-defined industry standard runs counter to public policy, or is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. Indeed, the complaint does not contend that State Farm's repair estimates would have resulted in Levy driving a defective or unsafe car.[4] We conclude here, as we did in

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[4] The only manner in which the complaint implicates consumer safety relates to its allegation that State Farm repair estimates omit a line item for a seat belt check, "facilitating a potential safety hazard." The complaint, however, does not allege a seat belt check was omitted from Levy's estimate.

Bardin, that State Farm's failure to follow general industry standards does not constitute an unfair business practice.

D. *Plaintiffs Have Not Alleged a Cause of Action for Unjust Enrichment, Declaratory Relief, or Injunctive Relief*

"'[I]t is well settled that an action based on an implied-in-fact or quasi-contract cannot lie where there exists between the parties a valid express contract covering the same subject matter. [Citations.]'" (*Shvarts v. Budget Group, Inc*. (2000) 81 Cal.App.4th 1153, 1160.) Where suit is based on a written, binding insurance policy, a plaintiff must plead the policy is void or otherwise unenforceable to proceed with a quasi-contract claim. (*Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 203.) These plaintiffs have failed to do so.

Because each of plaintiffs' substantive claims fails as a matter of law, there is no "actual controversy" remaining between the parties that would support a declaratory relief claim. (See *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79.) Moreover, the lack of any viable cause of action defeats plaintiffs' injunction request, as "injunction is a remedy, not a cause of action." (*Roberts v. Los Angeles County Bar Assn.* (2003) 105 Cal.App.4th 604, 618.)

E. *The Trial Court Did Not Abuse Its Discretion in Dismissing Battle on Forum Non Conveniens Grounds*

Code of Civil Procedure section 410.30, subdivision (a), provides: "When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." "Forum non conveniens is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere." (*Stangvik v. Shiley, Inc.*

(1991) 54 Cal.3d 744, 751.) A trial court's decision to grant a motion to dismiss on forum non conveniens grounds is accorded "substantial deference." (*Ibid.*)

As we determined above, the plaintiffs have failed to allege a cause of action, with the possible exception of Battle's allegations State Farm violated Illinois' unfair business practices statute. We need not decide, however, whether Battle has pleaded a claim under Illinois law because the trial court did not err in dismissing on the grounds of forum non conveniens. Battle is an Illinois resident, involved in an automobile accident in Illinois, holding an Illinois insurance policy, and alleging an Illinois statutory claim. "'"There are manifest reasons for preferring residents in access to often overcrowded Courts, both in convenience and in the fact that broadly speaking it is they who pay for maintaining the Courts concerned.". . . [T]he injustices and the burdens on local courts and taxpayers, as well as on those leaving their work and business to serve as jurors, which can follow from an unchecked and unregulated importation of transitory causes of action for trial in this state . . . require that our courts, acting upon the equitable principles . . . , exercise their discretionary power to decline to proceed in those causes of action which they conclude, on satisfactory evidence, may be more appropriately and justly tried elsewhere.'" (*Stangvik, supra,* 54 Cal.3d at p. 751) California simply has no interest in adjudicating Battle's potential claim.

Because Levy has failed to allege a viable claim and Battle was properly dismissed for forum non conveniens, there are no named class representatives. Accordingly, the trial court did not err in dismissing the class action. Moreover, plaintiffs have not demonstrated they could further amend their fifth amended complaint to state a viable cause of action. Accordingly, we conclude the trial court did not err in denying leave to further amend.

IV

DISPOSITION

The judgment is affirmed. State Farm is entitled to its costs on appeal.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.

Filed 4/23/07

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

EUGENE LEVY et al., Plaintiffs and Appellants, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant and Respondent.	G035677 (Super. Ct. No. 02CC00265) O R D E R

Pursuant to California Rules of Court, rule 8.1120(a), respondent State Farm Mutual Automobile Insurance Company and nonparty 21st Century Insurance Company have requested that our opinion, filed on March 23, 2007, be certified for partial publication, and nonparties Association of California Insurance Companies, Personal Insurance Federation of California, and Infinity Insurance Company have requested that our opinion be certified for full publication. It appears portions of the opinion meet the standards set forth in California Rules of Court, rule 8.1105(c). The requests of State Farm and 21st Century are therefore GRANTED.

Pursuant to California Rules of Court, rules 8.1105(c) and 8.1110, this opinion is ordered published, with the exception of parts III.B, III.C, III.D, and III.E.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.